

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PRESIDENT OF THE ARIZONA STATE SENATE WARREN PETERSEN,
SPEAKER OF THE ARIZONA HOUSE OF REPRESENTATIVES BEN TOMA,
AND ARIZONA CHAMBER OF COMMERCE AND INDUSTRY,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY AND MICHAEL S. REGAN,
IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR OF THE U.S. ENVIRONMENTAL
PROTECTION AGENCY

Respondents

PETITIONERS' NONBINDING STATEMENT OF ISSUES

In accordance with this Court's Order issued on March 25, 2024, Petitioners the Arizona Chamber of Commerce and Industry, President of the Arizona State Senate Warren Petersen, and Speaker of the Arizona House of Representatives Ben Toma hereby submit this Nonbinding Statement of Issues with Respect to their Petition for Review of the U.S. Environmental Protection Agency's final rule entitled "Reconsideration of the National Ambient Air Quality Standards for Particulate Matter," 89 Fed. Reg. 16,202 (March 6, 2024).

1. Whether the EPA acted arbitrarily, capriciously, or in a manner otherwise contrary to law by improperly undertaking a non-statutory reconsideration rather than a review under § 109 of the Clean Air Act.

2. Whether EPA acted arbitrarily, capriciously, or in a manner otherwise contrary to law by failing to adequately consider all required and relevant factors in making its decision, including, among other things, costs, implementation questions, current air quality risks, and attainment feasibility.
3. Whether EPA acted arbitrarily, capriciously, or in a manner otherwise contrary to law by setting a 60-day effective date.
4. Whether the Final Rule is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law because EPA failed to conduct the analysis required by the Clean Air Act.
5. Whether the Final Rule is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law because EPA relied on factors that Congress did not intend for it to consider or because EPA failed to consider all required and relevant factors.
6. Whether the Final Rule is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law because EPA's explanation for lowering the primary annual NAAQS for PM_{2.5} is contrary to the available scientific evidence before it or because EPA failed to provide a reasoned explanation for its decision.
7. Whether the Final Rule is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law because EPA failed to respond to significant comments or other relevant documents.

Petitioners reserve the right to raise any additional issues in briefs to be filed in this case.

Respectfully submitted this 9th day of April, 2024.

/s/ Nate Curtisi

Nate Curtisi

(DC Cir. Bar No. 65164)

Michael G. Bailey

(Arizona Bar No. 013747)

ARIZONA CHAMBER OF
COMMERCE

100 N. 7th Ave, Suite 120

Phoenix, Arizona 85007

(602) 248-4430

ncurtisi@azchamber.com

*Counsel for Arizona Chamber of Commerce
and Industry*

/s/ Brunn (Beau) W. Roysden III

Brunn (Beau) W. Roysden III

(DC Cir. Bar No. 64493)

FUSION LAW, PLLC

7600 N. 15th St., Suite 150

Phoenix, Arizona 85020

beau@fusion.law

(602) 315-7545

*Counsel for President of the
Arizona State Senate Warren
Petersen and Speaker of the Arizona
House of Representatives Ben Toma*

CERTIFICATE OF SERVICE

I certify, pursuant to Fed. R. App. P. 25(c), that the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter, who are registered with the Court's CM/ECF system.

Dated: April 9, 2024

/s/ Nate Curtisi

Nate Curtisi